



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 06, 2022

IN THE MATTER OF:

Appeal Board No. 621294

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 621293, 621294 and 621295, the Appeal Board, on its motion pursuant to Labor Law § 620 (3), has reopened and reconsidered the

Judge's decisions in A.L.J. Case Nos. 321-05872, and 321-05874, filed November 22, 2021, which sustained, as modified, the initial determinations holding the claimant ineligible to receive benefits, effective March 9, 2020 through December 20, 2020, on the basis that the claimant was not totally unemployed; holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective March 9, 2020 through December 20, 2020; charging the claimant with an overpayment of \$6,548.75 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) of \$1,200 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance (LWA) benefits of \$600 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5).

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed a claim for benefits on March 19, 2020, with an effective date of March 9, 2020 and a weekly benefit rate of \$403. The claimant received and read the Claimant Handbook which included the following advisement:

You must report all work, including part-time or temporary work...Important: If you did any work on a day, even if it was an hour or less and even if you did not receive pay, it counts as a day of work and you must report it that way.

The claimant did not work in the weeks ending March 15, July 26, and September 21, 2020. The claimant worked on one day in each of the weeks ending August 2, August 16, and September 28, 2020. The claimant worked on two days in each of the weeks ending August 9, September 13, October 4, October 19, and October 25, 2020. The claimant worked on three days in each of the weeks ending March 29, July 5, July 12, August 30, September 6, and December 20, 2020; however, in the weeks ending July 5 and July 12, 2020, the claimant earned more than \$504 each week. The claimant worked on four or more days and/or earned over \$504 in the weeks ending March 22, July 19, November 1, November 9, November 15, November 22, November 29, December 6, and December 13, 2020.

The claimant worked for the employer as an insurance fraud investigator which entailed two types of work, surveillance work for which he was paid in the two-week pay period in which the work was performed and non-surveillance work which took weeks or months to complete. For the non-surveillance work, the claimant was paid when the cases closed. When certifying for benefits each week, the claimant knew how many days he had worked and knew he would be paid for all the services he performed in that week but did not report his work in that manner. Instead, he reported his days of work and earnings based on when he was paid for the work, estimating the days that he worked each week. With each of the weekly certifications at issue, the claimant reported that he did not earn over \$504. The claimant also underreported the number of days he worked each week, except for his certifications on July 26, 2020, for the week ending July 26 in which he accurately reported that he worked zero days and on September 21, 2020, for the week ending September 20 in which he reported a day of work when he had not worked at all that week.

The claimant received \$6,548.75 in PUA benefits. In addition, the claimant received \$600 in weekly FPUC benefits for the weeks ending July 5, July 12, July 19, and July 26, 2020; and received \$300 in weekly LWA benefits for the

weeks ending August 2, August 9, August 16, and September 13, 2020.

OPINION: The credible evidence establishes that the claimant worked and had earnings during the period at issue. The claimant agreed that the business record which the employer produced at the adjourned hearing accurately reflected the days on which he worked as well as his earnings for the weeks at issue. Since the claimant worked on four or more days and/or earned more than \$405 in wages for the weeks ending March 22, July 5, July 12, July 19, November 1, November 8, November 15, November 22, November 29, December 6, and December 13, 2020, he was not eligible for benefits for those weeks.

However, the claimant was eligible for partial benefits for the remaining weeks at issue. Since the claimant worked on one day in the weeks ending August 2, August 16, and September 28, 2020, he was eligible for three days of benefits in those weeks. Since the claimant worked on two days in the weeks ending August 9, September 13, October 4, October 19, and October 25, 2020, he was eligible for two days of benefits in those weeks. Finally, since the claimant worked on three days in the weeks ending March 29, August 30, September 9, and December 20, 2020, he was eligible for one day of benefits in those weeks. To the extent that the claimant was paid for days on which he worked or for weeks in which he earned over \$504 in benefits, he was overpaid benefits.

The claimant conceded that he underreported his days of work as well as his earnings in the weeks noted above. As such, the claimant's certifications for those weeks constitute factually false statements and any PUA benefits he was paid for days on which he worked or for weeks in which he worked four or more days and/or earned more than \$504, are recoverable. With respect to the FPUC and LWA benefits paid to the claimant, the CARES Act provides that a claimant is entitled to FPUC benefits for any week in which he was eligible for at least \$1 of PUA benefits and is entitled to LWA benefits for any week in which he was eligible for at least \$100 in PUA benefits. As the claimant was entitled to his full benefit rate for the week ending July 26, he was also entitled to the \$600 in FPUC benefits he received for that week. Similarly, as the claimant was eligible for either two or three days of PUA benefits in the weeks ending August 2, August 9, and August 16, he was eligible to receive the \$300 in LWA benefits he received for those weeks. Accordingly, for these weeks, the FPUC and LWA benefits were not overpaid.

Finally, with respect to the issue of willful misrepresentation to obtain

benefits, the claimant admittedly received and read the Claimant Handbook which advised him to report all work whether paid or not. Further, the claimant knew the number of days on which he worked each week as well as what he had earned each week when he underreported both. As such, the certifications in which he underreported the days on which he worked and/or his earnings also constitute willful misrepresentations for Unemployment Insurance purposes. Accordingly, a civil penalty was properly imposed.

The determinations issued by the Department of Labor are, hereby, modified in accordance with the findings herein. We refer the matters back to the Department of Labor for recalculation of the amount of overpaid benefits as well as the civil penalty to be imposed consistent with this decision.

DECISION: The decisions of the Administrative Law Judge are modified in accordance with the findings in this decision and, as so modified, are affirmed.

In Appeal Board Nos. 621293, 621294 and 621295, the initial determinations, holding the claimant ineligible to receive benefits, effective March 9, 2020 through December 20, 2020, on the basis that the claimant was not totally unemployed; holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective March 9, 2020 through December 20, 2020; charging the claimant with an overpayment of \$6,548.75 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) of \$1,200 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance (LWA) benefits of \$600 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), are modified in accordance with the findings in this decision, and, as so modified, are sustained.

The claimant is allowed benefits, in part, and denied benefits, in part, with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER